INTAN ENTERPRISES CO.

v.

SYKT. SERI PADU SDN. BHD.

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOFF MOHAMED J
[CIVIL SUIT NO. 193/79]
30 NOVEMBER 1982

CIVIL PROCEDURE: *Writ and statement of claim - Application to strike out - No reasonable cause of action - No privity of contract.*

The respondents applied to strike out the writ and statement of claim on the ground that the statement of claim did not disclose any reasonable cause of action. They contended that the plaintiffs were suing as a firm but the agreement relied upon by the plaintiffs was not with the firm but with one Cik Zainun as an individual, that in fact the firm was registered after the agreement had been entered into, and that therefore there was no privity of contract between the parties to the action.

Held:

[1] The respondents were aware of the impending partnership when Cik Zainun entered into the agreement. (*Syarikat Seri Padu Sdn. Bhd. v. Intan Enterprises Company* [1982] CLJ (Rep) 336).

[2] They could always apply during trial to strike out the other parties if they could establish that they were not partners in the plaintiffs' firm.

[Application dismissed.]

Case referred to:

Syarikat Seri Padu Sdn. Bhd. v. Intan Enterprises Company [1982] 2 MLJ 17; [1982] CLJ (Rep) 336

For the plaintiffs - Raja Aziz Addruse; M/s. Rithauddeen & Aziz
For the defendants - K.C. Koh; M/s. K.C. Koh & Co.

JUDGMENT

Mohd. Yusoff Mohamed J:

The respondents in this action applied by Summons to strike out the Writ and Statement of Claim on the ground that the Statement of Claim discloses no reasonable cause of action. The plaintiffs are suing as a firm.

Their affidavit in support of this application states that firstly, the agreement of 20 November 1978 relied upon by the plaintiffs was entered into between one Cik Zainun binte Md. Taib as an individual with the respondents. The plaintiffs, being a firm, they contend that there is therefore no privity of contract between the plaintiffs and the respondents.

Secondly, it is contended that upon a search of the Registry of Business by the respondents, it reveals that the plaintiffs' company was registered on 20 December 1978 (one month after the agreement had been entered) as a sole proprietorship firm although it commenced business on 18 November 1978. They also state that the company had taken two new partners only on 16 August 1979 after the plaintiffs had filed this action on 13 June 1979. They also contend that this was done upon realizing that the company could not sue as a firm.

Pursuant to this action, the plaintiffs had obtained an injunction against the respondents to deal with the property involved in the agreement. The respondents consequently applied to set aside the injunction. Both these arguments were advanced to the Judge hearing the application for injunction. The Judge's decision in refusing to remove the injunction was appealed to the Federal Court and the Federal Court has now decided on that appeal. See *Syarikat Seri Padu Sdn. Bhd. v. Intan Enterprises Company* [1982] CLJ (Rep) 336.

In dealing with those two points raised by the respondents the Federal Court finds at p. 339 that:

> ... the contention by Seri Padu that their agreement was with Cik Zainun binte Mohd. Taib, trading as Intan Enterprises Company. By this, Seri Padu contend that they have been dealing with a sole proprietorship and not with a partnership. For Intan, it is argued that Cik Zainun has the right to take in partners into her firm. In arguments many authorities have been discussed.
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> For the purpose of the present case we need not refer to them. It is shown by affidavit of Amran bin Abdul Rahman of 15 September 1979 (pp. 80 - 84 of record) that on 18 November 1978 Cik Zainun submitted her application, Form A Business Registration (p. 86 of record), for registration of her business as proprietor of Intan Enterprises Company. This application was registered on 20 December 1978. On the same day i.e., 18 November 1978, Form B, Registration of Changes in Business for Intan Enterprises Company, was also filed giving three names as partners, Zainun binte Mohd. Taib, Amran bin Abdul Rahman and Kassim bin Mohamad @ Mamat, but this Form was only registered on 16 August 1979. For Seri Padu, it has been suggested that there might be some impropriety in the registration having taken so long. We can only say that this would be a matter of speculation. **On the evidence and in circumstances of the present case**, the fact that Cik Zainun entered into the 1978 Agreement in her name trading as Intan Enterprises Company does not necessarily mean that she was entering into the agreement solely in her own right. **There are strong indications that Seri Padu must have been aware that she was establishing a partnership when she entered into the agreement.**
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> (Emphasis supplied).

I have no reason to go against the Federal Court's finding on the same facts raised there. Indeed, I would take the same view in that on the first ground, the respondents were aware of the impending partnership when Cik Zainun entered into the agreement. Secondly the respondents could always apply during trial to strike out other parties if they could establish that they were not partners in the plaintiffs' firm.

For these reasons application is dismissed with costs.

Also found at [1983] 2 CLJ 139